

WE Balasingam v Malaysian Bar

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HIGH COURT (IPOH) — OROGINATING SUMMONS NO 24–809 OF 2005
BALIA YUSOF J
14 JULY 2006

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Legal Profession — Malaysian Bar — Annual General Meeting of State Bar — Whether notice for adjourned meeting must be issued separately — Whether the election of the new office bearers valid — Legal Profession Act 1976 s 70(2)

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The plaintiff, a senior member of the Perak Bar filed an application in effectively seeking for a declaration as to the validity of the Annual General Meeting of the Perak Bar held at 4pm on 4 March 2005 after the first meeting at 3.30pm was adjourned to 4pm on the same day when there was no quorum. The defendant filed an application to strike out the same under O 18 r 19 of the Rules of the High Court 1980 on the ground that the plaintiff's application discloses no reasonable cause of action, scandalous, frivolous or vexatious and also and abuse of the court's process. The question posed is whether the Annual General Meeting held on 4 March 2005 was carried out in accordance with the provisions of s 70(2) of the Legal Profession Act 1976 and whether the election of the new office bearers are valid and in accordance with the said provision. The court agrees with the approach suggested by the parties and holds that the defendant's application to strike out the plaintiff's application will be decided solely on the issue of the construction and interpretation of s 70(2) of the Legal Profession Act 1976 and whether the defendant has complied with the same.

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Held:

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The words in s 70(2) of the Legal Profession Act 1976 is clear and unambiguous and as such the purposive approach to the interpretation of the said section is inapplicable (see *Wong Pot Heng v Zainal Abidin Putih* [1990] 2 MLJ 410). The words in the section are crystal clear and the intention of Parliament can easily be gathered from those words used. The proviso to the section 'unless otherwise notified to members' clearly gives a choice to the State Bar Committee to prefer a different time and place for the adjourned meeting. To adopt the plaintiff's submission that the notice of the adjourned meeting can only be issued after the outcome of the 'first' annual general meeting will certainly lead to absurdity and a departure from what the legislature has intended (see paras 12–13).

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[Bahasa Malaysia summary]

Plaintif, seorang ahli kanan Majlis Peguam Perak memfailkan satu permohonan memohon suatu deklarasi kesahihan Mesyuarat Am Tahunan Majlis Peguam Perak

- A yang diadakan pada pukul 4 petang pada 4 Mac 2005 selepas mesyuarat yang pertama pada 3.30 petang ditangguhkan ke pukul 4 petang pada hari yang sama selepas tiada kuorum. Defendan memfailkan satu permohonan untuk membatalkan permohonan plaintif di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan bahawa permohonan plaintif tidak mendedahkan sebarang kausa
- B tindakan, melampau, remeh atau menyusahkan dan juga penyalahgunaan proses mahkamah. Soalan yang dikemukakan ialah sama ada Mesyuarat Am Tahunan yang diadakan pada 4 Mac 2005 telah dijalankan mengikut peruntukan-peruntukan s 70(2) Akta Profesyen Undang-Undang 1976 dan sama ada pemilihan pemegang-pemegang jawatan yang baru adalah sah dan mengikut peruntukan tersebut. Mahkamah bersetuju dengan cadangan pihak-pihak dan memutuskan
- C bahawa permohonan defendan untuk membatalkan permohonan plaintif akan diputuskan hanya berdasarkan pentafsiran dan interpretasi s 70(2) Akta Profesyen Undang-Undang 1976 dan sama ada defendan telah mematuhi.

D Diputuskan:

- Perkataan-perkataan dalam s 70(2) Akta Profesyen Undang-Undang 1976 adalah jelas dan tidak taksa dan dengan itu pendekatan 'purposive' terhadap tafsiran yang dicadangkan untuk seksyen tersebut adalah tidak terpakai (lihat *Wong Pot Heng v Zainal Abidin Putih* [1990] 2 MLJ 410). Perkataan-perkataan diseksyen tersebut
- E adalah amat jelas dan hasrat Parlimen dapat dikumpulkan daripada perkataan-perkataan yang digunakan. Proviso kepada seksyen tersebut 'unless otherwise notified to members' dengan jelas memberi pilihan kepada Jawatankuasa Majlis Peguam Negeri untuk memilih satu masa dan tempat yang berlainan bagi mesyuarat yang ditangguhkan itu. Sekiranya memakai hujahan plaintif bahawa notis untuk mesyuarat yang ditangguhkan itu hanya boleh dikeluarkan selepas keputusan
- F mesyuarat am tahunan yang 'pertama' akan pasti tidak munasabah dan menyimpang daripada niat badan perundangan (lihat perenggan 12–13).]

Notes

- G For cases on Malaysian Bar generally, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1683–1685.

Cases referred to

- Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 69 (refd)
- Hiralal Ratan Lai v The Sales Tax Officer, Section III Kanpur* AIR (1973) SC 1034 (refd)
- H *Magor & St. Mallons Rural District Council v Newport Corporation* [1952] AC 189 (refd)
- Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385 (refd)
- I *PP v Sihabudin & Anor* [1980] 2 MLJ 273 (refd)
- Wardburton v Loveland* [1832] 2 D & CI 480 (refd)
- Wong Pot Heng v Zainal Abidin Putih* [1990] 2 MLJ 410 (refd)
- Woodward v Watts* [1853] 2 E&B 452 (refd)
- Yeo Peck Chie v KS Gill & Co* [1946] MLJ 131 (refd)

Legislation referred to

Legal Profession Act 1976 s 70(2)

Rules of the High Court 1980 O 14A, O 18 r 19

*Arivanandhan & WE Balasingam for the plaintiff.**Puravelan (Raam Kumar, KB. Tan & Fredrick Indran Nicholas with him) for the defendant.***Balia Yusof J:**

[1] The plaintiff, a senior member of the Perak Bar filed an application in encl 1 effectively seeking for a declaration as to the validity of the Annual General Meeting of the Perak Bar held at 4pm on 4 March 2005 at Mahkamah Tinggi (No 1) Ipoh. The plaintiff also sought for determination whether the election of the office bearers of the Perak Bar Committee for the year 2005/2006 was valid and in accordance with the provisions of the Legal Profession Act 1976.

[2] Responding to the above said application, the defendant filed an application to strike out the same under O 18 r 19 of the Rules of the High Court 1980 on the ground that the plaintiff's application discloses no reasonable cause of action, scandalous, frivolous or vexatious and also and abuse of the court's process.

[3] The undisputed facts of the case reveal that on 7 February 2005 the Honorable Secretary of the Perak State Bar Committee issued a notice pursuant to s 70 of the Legal Profession Act 1976 which reads:

NOTICE OF MEETING OF STATE BAR

Pursuant to Section 70 of the Legal Profession Act 1976 (as amended by the Legal Profession (Amendment) Act A 507/83) I am required and do hereby summon you to an Annual General Meeting of Members of the Perak State Bar to be held at 3.00 pm on Friday, the 4th day of March, 2005 at the High Court No. 1 Ipoh, Perak.

In the event no quorum is reached by 3.30 pm the said meeting will stand adjourned and be held at 4.00 pm on the same day and venue. Dated the 7th day of February 2005

(Sgd)

Prithi Verma

Hon. Secretary

2004/2005

[4] On 4 March 2005 at 3.30pm, there was no quorum and the meeting was adjourned. At 4pm on the same day and at the same venue, the Annual General Meeting was carried out and resolutions were passed including the appointment of new committee members for the Perak Bar 2005/2006. The question that has been posed before the court is whether the said Annual General Meeting was carried out in accordance with the provisions of s 70(2) of the Legal Profession Act 1976 and whether the election of the new office bearers are valid and in accordance with the

A said provision. It has been agreed between the parties that this issue be argued between them at the hearing of encl 7 which is an application by the defendant to strike out the plaintiff's claim under O 18 r 19 of the Rules of the High Court 1980. The parties also agreed that the defendant's application in Enclosure 7 be decided solely on the issue of construction and interpretation of s 70(2) of the Legal Profession Act 1976. The court agrees with the approach suggested by the parties and holds that the defendant's application to strike out the plaintiff's application will be decided solely on the issue of the construction and interpretation of s 70(2) of the Legal Profession Act 1976 and whether the defendant has complied with the same.

C [5] For ease of reference subsection (1) and (2) of s 70 of the Legal Profession Act 1976 reads as follows:

70. Annual General Meeting of State Bar

D (1) The Secretary of each State Bar shall, before the first day of March in each year, summon all members of the State Bar to an annual general meeting to be held in that month at a time and place to be fixed by him. Only members of the State Bar shall be entitled to attend and vote at the meeting.

(1A)...

E (2) At every annual general meeting, the Chairman of the State Bar Committee shall preside and in his absence the most senior member present who is willing to preside shall preside and the quorum shall be one-third of the total number of members of the State Bar. If a quorum is not present within half an hour from the time appointed for holding the meeting it shall stand adjourned to the same day in the week next following at the same time and place unless otherwise notified to members by the State Bar Committee.

F [6] It is without doubt that a notice under subsection (1) of the said section must precede any Annual General Meeting indicating the time and place of such meeting. The plaintiff contends that reading both subsections (1) and (2) together, the notice issued by the defendant in this case is invalid and has contravened the above said provisions. In the plaintiff's submission, the notice of the 'adjourned annual general meeting' can only come about after the outcome of the 'first annual general meeting'.

G In other words the plaintiff is contending that the notice given in this case which is given before the outcome of the 'adjourned annual general meeting' is invalid. For the defendant, it is submitted that the words 'unless otherwise notified to members' clearly affords a choice to the defendant either to postpone the meeting to the week next following at the same time and place or to do otherwise which in this case the defendant has chosen to adjourn the meeting to 4pm the same day and place. I am more inclined to the defendant's view for the very reason that the clear and unambiguous words of s 70(2) of the Act, affords the defendant with that choice. It has been well established that in construing a statutory provision, the first and foremost rule of construction is the literary construction. The Federal Court in *Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385 cited with approval a passage from the Indian Supreme Court case of *Hiralal Ratan Lai v The Sales Tax Officer, Section III Kanpur* AIR (1973) SC 1034 at p 1039 which said:

In construing a statutory provision, the first and foremost rule of construction is the literary construction. All we have to see at the very outset is what does the provision say? If the

provision is unambiguous and if from that provision the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intent is not clear.

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[7] In the case of *Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 69 at p 70, the Federal Court said:

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It may be apposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.

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It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed. per Bayley J in *R v Ramsgate (Inhabitants)* [1827] 6 B&C 712.

[8] Willan CJ in *Yeo Peck Chie v K.S. Gill & Co*; [1946] MLJ 131 at p 133 said:

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In interpreting the provisions of a statute, one of the cardinal rules is to adhere as closely as possible to the literal meaning of the words. If an authority is required for this, it will be found in the case of *Abbott v Middleton* [1858] 7 HLC 114). Once the literal meaning has been established then, however unjust, arbitrary or inconvenient such meaning may be, it must receive its full effect — see *Biffin v Yorke* (5 Man & G 428). Nor is it the function of the Court to scan the wisdom or policy of a statute — see *May v The Great Western Railway Co* (41 LJQB 104).

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[9] Much earlier, the English Courts have stated in similar terms. In *Woodward v Watts* (1853) 2 E&B 452, the court said:

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The golden rule in the construction of an Act of Parliament is to put on the words of it their natural and grammatical construction although that may lead to some inconvenience, absurdity, or mischief; it being for the judges to construe Acts of Parliament; and not to legislate, and for the legislature to provide a remedy when one is wanted.

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[10] In *Wardburton v Loveland* [1832] 2 D. & Cl (HL) 480, 489 Tindal CJ said:

Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.

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[11] Lord Simonds in *Magor & St.Mallons Rural District Council v Newport Corporation* [1952] AC 189, HL stated that the duty of the court is to interpret the words of the statute that the legislature has used and our Federal Court in the case of *PP v Sihabudin & Anor* [1980] 2 MLJ 273 at p 275 said:

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Thirdly, if the law-maker so amends the law, to paraphrase the words of Lord Diplock at page 541 in *Duport Steels Ltd v Sirs* [1980] 1 All ER 529, the role of the judiciary is confined to ascertaining from the words that the law-maker has approved as expressing its intention what that intention was and to giving effect to it. Where the meaning of the words is plain and unambiguous it is not for judges to invent fancied ambiguities as an excuse for failing

- A** to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral; or to paraphrase the words of Lord Scarman at page 551 in the same case in the field of statute law the judge must be obedient to the will of the law-maker as expressed in its enactments, the judge has power of choice where differing constructions are possible, but he must choose the construction which in his judgment best meets the legislative purpose of the enactment. Even if the result
- B** be unjust but inevitable, he must not deny the statute; unpalatable statute law may not be disregarded or rejected, simply because it is unpalatable: the judge's duty is to interpret and apply it.

- C** [12] In my view, the words in s 70(2) of the Legal Profession Act 1976 is clear and unambiguous and as such the purposive approach as suggested by the plaintiff to the interpretation of the said section is inapplicable. Mohd Azmi SCJ in *Wong Pot Heng v Zainal Abidin Putih* [1990] 2 MLJ 410 at p 414 observed that:

- D** It is a well established principle that the purposive approach to the interpretation of legislation only applies where any doubt arises from the terms or words employed by the legislature. But where the words are precise and unambiguous, then the literal and strict construction rule should apply.

- E** [13] The words in the section are crystal clear and the intention of Parliament can easily be gathered from those words used. The proviso to the section 'unless otherwise notified to members' clearly gives a choice to the State Bar Committee to prefer a different time and place for the adjourned meeting. To adopt the plaintiff's submission that the notice of the adjourned meeting can only be issued after the outcome of the 'first' annual general meeting will certainly lead to absurdity and a departure from what the legislature has intended. In the premises, I hold that the
- F** defendant has complied with the provision of s 70(2) of the Legal Profession Act 1976.

- G** [14] As agreed by the parties, this matter will be disposed of under O 14A of the Rules of the High Court 1980 and only prayer (a) in encl 1 is for the court's determination. Accordingly, this court makes no order in respect of encl 7 and consequentially the plaintiff's application in encl 1 is hereby dismissed.

Application dismissed.

- H** Reported by Sally Kee

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